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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,331	01/23/2004	Deon Anson	10787-1	5771

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EXAMINER	
WEIER, ANTHONY J	
ART UNIT	**PAPER NUMBER**
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/764,331	ANSON, DEON	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 December 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) *6* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claim 6 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election of Group 1 (claims 1-5) was made **without** traverse in the reply filed on 12/14/06.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mehansho et al taken together with (a) either one of Steinberg or Dobberstein et al, (b) Recipezaar, and (c) either one of Ekanayake et al or Chang et al.

Mehansho et al discloses beverage comprising a variety of ingredients including sucrose, fruit sugar, fructose corn syrup (col. 13, lines 4-31), citric acid (col. 19, lines 35-58), sodium (e.g. via preservatives; col. 19, lines 6-23), fruit juice (e.g. col. 13, lines 10-15; col. 16, lines 24-29), and carbonated water (col. 20, lines 22-31). In Example 4, Mehansho et al further discloses the use of maltodextrin as a sweetener. Although all of these ingredients are not necessarily expressly articulated together under one combination, Mehansho et al offers same as options, and, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed all of same in combination as a matter of

preference depending on the cost of different ingredients, availability (e.g. not enough of one sugar, so another is added to shore up the desired sweetness), and the general attribute desired from each ingredient (i.e. fruit juice contributes a certain flavor).

Mehansho et al further discloses the use of different teas in the beverage including those that have been fermented (e.g. col. 2, lines 11-40). Mehansho et al is silent regarding the combination of orange pekoe tea and pekoe cut black tea. However, such combination of tea in a beverage is well known as taught, for example, in either one of Steinberg (col. 3) or Dobberstein et al (e.g. Example 7). Furthermore, it is well known to employ same in combination with fruit juice as taught, for example, by Recipezaar. Absent a showing of unexpected results, it would have been further obvious to have included same in the beverage of Mehansho et al as the tea ingredient as a matter of preference depending on, for example, taste desired, availability, or cost.

Mehansho et al further discloses the presence of calcium citrate. The instant claims call for potassium citrate. It is notoriously well known to include either potassium or calcium citrate as a buffering agent in tea beverages as taught, for example, in Ekanayake et al (col. 5, lines 34-45). It would have been further obvious to have included same as an alternative buffering agent in the process of Mehansho et al as a matter of preference. In the alternative, it is well known to employ potassium citrate as a preservative in beverages as taught, for example, by Chang et al (e.g. col. 6, lines 41-53). It would have been further obvious to have added same to the beverage of Mehansho et al to aid in preservation of same.

The claims further call for the particular amounts of each ingredient. However, such determination would have been well within the purview of a skilled artisan, and it would have been further obvious to have arrived at such amounts as a matter of preference depending on the degree of attribute desired from each ingredient. For example, the amount of lemon-lime juice flavor desired in the final product would control the amount of same to be added to the beverage.

The claims further call for the particular maltodextrin to be used. However, maltodextrin M180 is notoriously well know. Such determination to use same would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have contributed same as a matter of preference depending on, for example, the cost and availability of same.

The claims further call for the particular juice to be used. However, all of the juices set forth are notoriously well known, and such determination to use same and combinations of same would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have contributed same as a matter of preference depending on, for example, the taste desired, the cost involved, and availability of same.

Additional Prior Art

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761

Anthony Weier
February 26, 2007